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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/692,920	10/20/2000	Robert O. Banker	60374.0004US25967904	8465
63558 7590 07/26/2012 MERCHANT & GOULD SCIENTIFIC ATLANTA, A CISCO COMPANY P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903				
EXAMINER				
IDOWU, OLUGBENGA O				
ART UNIT		PAPER NUMBER		
2425				
MAIL DATE		DELIVERY MODE		
07/26/2012		PAPER		

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT O. BANKER, DEAN F. JERDING,
ARTURO A. RODRIGUEZ, VALERIE GREW GUTKNECHT,
BINDU CRANDALL, ROBERT T. VAN ORDEN,
JEFF LEES, and JEROME NADEL

Appeal 2010-004557¹
Application 09/692,920
Technology Center 2400

Before JEAN R. HOMERE, THU A. DANG, and
CAROLYN D. THOMAS, *Administrative Patent Judges*.

HOMERE, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The real party in interest is Scientific-Atlanta, Inc. (App. Br. 2.)

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-5, 16-18, 21-23, 25-27, 32, 34, 35, 38-40, and 42-59. Claims 6-15, 19, 20, 24, 28-31, 33, 36, 37, and 41 have been canceled. (App. Br. 2.) We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellants' Invention

Appellants invented a method and system for indexing available on-demand media titles to facilitate of user's search and retrieval of desired titles via a set top box. (Spec. 2, ll. 1-3.) In particular, each index is configured as a continuous sequence of variably sized user selectable index ranges, each having a size based on a predetermined threshold number of media titles. (Fig. 10, Spec. 14, ll. 4-29.)

Illustrative Claim

Independent claim 1 further illustrates the invention as follows:

1. A method for providing media information to a user via an interactive media services client device coupled to a programmable media services server device, said method comprising steps of:

receiving media information corresponding to a plurality of accessible media;

configuring a display order of media titles in the received media information according to the value of a media information parameter;

configuring each index in a continuous sequence of variably sized user-selectable index ranges, the size of each of the index ranges based on a predetermined threshold number of media titles;

configuring the continuous sequence of variably sized user-selectable index ranges for indexing the media titles in the display order, each user-selectable index range corresponding directly to the media titles in the received media information determined by a respective range of values of the media information parameter corresponding to the user-selectable index range, such that selection of any of the user-selectable index ranges automatically provides the media titles corresponding to the selected index range;

presenting, to the user, the selectable index ranges in an interactive media guide display, each of the user selectable index ranges being configured to provide the media titles according to the threshold defining a predetermined number of media titles;

receiving selection of a first user-selectable index range, the selection being a triggering event to provide at least a portion of the media titles corresponding to the first user-selectable index range and without presenting an additional index range that was not previously presented prior to selection of the first user-selectable index range; and

directly responsive to a user selecting a first user-selectable index range, providing simultaneously in the display order at least a portion of the media titles corresponding to the first user-selectable index range,

wherein, in response to determining that the number of media titles corresponding to the first user-selectable index range is less than the threshold, combining the first user-selectable index range with an index within another user-selectable index range such that the media titles corresponding to the first user-selectable index range and the index within another user-selectable index may be accessed via a combined user-selectable index range.

Prior Art Relied Upon

The Examiner relies on the following prior art as evidence of unpatentability:

Rubinstein	US 5,721,897	Feb. 24, 1998
Young	US 5,808,608	Sept. 15, 1998
LaJoie	US 5,850,218	Dec. 15, 1998
Knudson	US 2005/0204387 A1	Sept. 15, 2005

Rejections on Appeal

The Examiner rejects the claims on appeal as follows:

1. Claims 1-5, 32, 34, 35, 38-40, 42-45, 52-55, and 57-59 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of LaJoie and Rubinstein.
2. Claims 16 and 48 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of LaJoie, Rubinstein, and Knudson.

3. Claims 17, 18, 21-23, 25-27, 46, 47, 49-51, and 56 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of LaJoie, Rubinstein, and Young.

ANALYSIS

We consider Appellants' arguments *seriatim* as they are presented in the principal Brief, pages 11-17.

Representative Claim 1

Dispositive Issue: Have Appellants shown that the Examiner erred in finding that the combination of LaJoie and Rubinstein teaches or suggests *configuring each index in a continuous sequence of variably sized user-selectable ranges, wherein each of said index ranges having a size based on a predetermined threshold number of media titles*, as recited claim 1?

Appellants argue that the Examiner erred in finding that proposed combination of references teaches or suggests the disputed limitations emphasized above. According to Appellants, LaJoie discloses a single index for each letter as opposed to an index range. Further, Appellants argue that Rubinstein discloses the size of a range is based on a computed average as opposed to a predetermined threshold. (App. Br. 12.) In particular, Appellants argue that the Rubinstein's disclosure of "approaching an average" may include values that exceed the average whereas the claimed predetermined threshold does not include such values. Therefore,

Appellants submit that the disclosed average does not teach the predetermined threshold. (Reply Br. 3-4.)

In response, the Examiner finds that LaJoie discloses an electronic TV guide on a TV monitor that dynamically displays in response to a user's inquiry an index of TV show themes corresponding to available programs being currently shown for a particular time period. (Ans. 16.) The Examiner also finds that LaJoie also discloses indexing the themes using letters associated therewith to thereby allow a user to quickly access a set of themes corresponding to a selected letter. (*Id.*) Further, the Examiner finds that Rubinstein discloses dynamically generating indexes by computing the average of keywords and key phrases in documents retrieved in response to a user's query to thereby group or index the keywords by an alphanumeric character associated therewith based on the computed average in order to quickly access the documents. (*Id.* at 17.) The Examiner submits that because Rubinstein's disclosure of approaching a previously calculated computer average teaches the predetermined threshold, Rubinstein's disclosure complements LaJoie's disclosure to teach the disputed limitations. (*Id.*)

On the record before us, we agree with the Examiner's findings and ultimate conclusion of obviousness. In particular, Rubinstein discloses dynamically generating a plurality of variably sized indexes (Fig. 5, item 512), the size of each index being previously computed based on the average number of keywords and key phrases beginning with the same alphanumeric character therein. (Col. 10, l. 48- col. 11, l. 10.) We find that because

Rubinstein discloses computing ahead of time the average number of keywords for determining the size of each index, Rubinstein fairly teaches or suggests a predetermined threshold value for that index. That is, the size of each index for which an average value was previously computed will approach the computed value, and not exceed it. We do not agree with Appellants that one of ordinary skill in the art would interpret approaching the computed value to values that exceed the computed average. In our view, this loose interpretation of the cited teaching would vitiate Rubinstein's disclosure of generating the index having a size that approaches its average number of keywords as it is well-known that approaching a value only means getting close to it, but not exceeding it. We are therefore satisfied that Rubinstein's disclosure sufficiently complements LaJoie to thereby teach the disputed limitations. It follows that Appellants have not shown error in the Examiner's rejection of claim 1.

Regarding claims 2-5, 16-18, 21-23, 25-27, 32, 34, 35, 38-40, and 42-59, Appellants substantially repeat the same arguments presented for claim 1. As discussed above, we find those arguments unpersuasive. Further, Appellants argue neither Knudson nor Young teaches the additional limitations of the cited claims. (App. Br. 13-17.) We find Appellants' mere allegations do not constitute separate arguments. It therefore follows that Appellants have not shown error in the Examiner's rejection of claims 2-5, 16-18, 21-23, 25-27, 32, 34, 35, 38-40, and 42-59.

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DECISION

We affirm the Examiner's rejections of claims 1-5, 16-18, 21-23, 25-27, 32, 34, 35, 38-40, and 42-59 as set forth above.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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